

APPEAL NO. 032453
FILED OCTOBER 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on August 26, 2003. The hearing officer determined that the appellant's (claimant) current right knee condition is not a result of the (date of injury No. 1), compensable injury; that the claimant did not sustain a compensable injury on (date of injury No. 2); and that the claimant did not have disability as a result of the 2002 claimed injury. The claimant appeals these determinations and alleges that respondent 2 (carrier 2) failed to exchange a witness statement "as required by the rules" and that this failure constitutes reversible error. Respondent 1 (carrier 1) and carrier 2 urge affirmance of the hearing officer's decision. In addition to urging affirmance, carrier 2 asserts that the alleged failure to exchange the aforementioned witness statement is unfounded and that the claimant waived the right to complain about it on appeal by failing to raise an objection at the hearing.

Affirmed.

The disputed issues in this case involved factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). However, we point out that although the hearing officer determined that the claimant's current right knee condition is not a result of the 1997 compensable right knee injury, the hearing officer has no authority to terminate the claimant's lifetime health care reasonably required for the compensable injury. Section 408.021.

With regard to the claimant's allegation that carrier 2 failed to properly exchange a witness statement, we note that the claimant did not raise this issue at the hearing and, consequently, waived the right to make this complaint on appeal.

The hearing officer's decision and order is affirmed.

The true corporate name of insurance carrier 1 is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

The true corporate name of insurance carrier 2 is **MARYLAND CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge